



Case in Brief: **Atlantic Lottery Corp. Inc. v. Babstock**

Judgment of July 24, 2020 | On appeal from the Court of Appeal of Newfoundland and Labrador

Neutral citation: 2020 SCC 19

A class action lawsuit about video lottery games can't go forward, the Supreme Court has ruled.

Video lottery terminals (VLTs) are electronic gambling machines. They let people pay to play gambling games, like slots, for fun or in hopes of winning money. They are usually found in bars and places that sell alcohol. Any place that has a VLT has to get a licence for it. In Newfoundland and Labrador, Atlantic Lottery Corporation approves the licence.

Mr. Babstock played VLTs. He wanted to sue Atlantic Lottery Corporation. He said VLTs were dangerous and that they tricked people. He said Atlantic Lottery Corporation should have to pay six years' worth of profits from VLTs in Newfoundland and Labrador to the people who played them. Mr. Babstock wanted to sue on behalf of all of these people.

When a large group of people have the same legal problem, they might decide to get together and sue as a group. This is called a "class action" lawsuit. (The "class" is the group, so it's a group action.) A class action lets the whole group get their complaint dealt with in court at once. Otherwise, each person would have to go to court on their own. A judge has to "certify" the class action, to give it permission to go ahead. A "representative plaintiff" is a person that represents the entire group. In this case, Mr. Babstock was the representative plaintiff. He asked the court to certify the class action.

Mr. Babstock said that Atlantic Lottery Corporation was negligent (that is, it didn't take proper care). He said it should have warned people about the risks of gambling on VLTs. These risks included addiction and suicidal thoughts. Mr. Babstock said this was wrong. He said Atlantic Lottery Corporation should have to pay the group all the profits it made. He said it had to do this even if no one showed any harm or loss. Mr. Babstock said that this was a "waiver of tort." He said it wasn't just a way of *compensating* harm, but that it was the *basis* for that harm.

Also, Mr. Babstock said that Atlantic Lottery Corporation broke a contract with each person who paid to play. He said it should have provided games that were safe. Instead, the games tricked people. This was a "breach of contract."

Finally, he said Atlantic Lottery Corporation got a benefit at the group's expense that it didn't have a legal right to. This was "unjust enrichment."

Both the certification judge and Court of Appeal said the class action could go ahead. They said "waiver of tort" may be a basis someone could sue on, not just a way of compensating for harm.

The majority of judges at the Supreme Court said that none of Mr. Babstock's arguments had a chance of success. Because of this, they said the class action shouldn't go ahead.

All the judges agreed that "waiver of tort" doesn't exist in Canadian law. They said people could be compensated for harm through "disgorgement" but that it couldn't be the basis for harm. Disgorgement means giving up your profits even if you didn't cause anyone harm or loss.

The majority said that disgorgement could only be used as compensation in very specific situations, like a broken contract. It could only be used if other ways of compensating wouldn't work. For example, if it isn't possible to calculate the amount of the loss, or if the loss can't be expressed in money, disgorgement might be an option. The majority said that wasn't the case here.

The majority said this wasn't a case of "unjust enrichment" because there was a contract, as Mr. Babstock admitted. Getting a benefit from a valid contract is a legal reason to keep that benefit.

Trials, especially class action trials, take a lot of time and money. This is why judges have to make sure a class action has a chance of success before saying it can go ahead. They don't look at all of the evidence to decide this. They just apply the law to decide whether it would have a chance of success if all the claims were true.

Breakdown of the decision: *Majority:* Justice Russell [Brown](#) allowed the appeal (Justices [Abella](#), [Moldaver](#), [Côté](#), and [Rowe](#) agreed) | *Dissenting in part:* Justice Andromache [Karakatsanis](#) would have allowed the class action to go forward based solely on breach of contract, because disgorgement and other remedies were available even if they didn't compensate for loss (Chief Justice [Wagner](#) and Justices [Martin](#) and [Kasirer](#) agreed)

More information (case # 38521): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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